



Committee On Finance

Max Baucus, Ranking Member

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BAUCUS COMMENTS ON RELEASE OF GAO REPORT: STANDARD OF REVIEW AND IMPACT OF TRADE REMEDY RULINGS IN THE WTO

(WASHINGTON, D.C.) U.S. Senator Max Baucus today released the following statement regarding findings by the General Accounting Office (GAO) about the World Trade Organization's (WTO) process for handling trade remedy disputes:

"Today, the General Accounting Office is releasing a report prepared at my request on the World Trade Organization's handling of trade remedy disputes. This report confirms my concern that the WTO dispute settlement process has gone badly wrong and that changes are needed to bring it back on course.

In the report, GAO finds that trade remedies imposed by the United States are two or three times more likely to be challenged – and found in violation of WTO rules – than those of other major trade remedy users. Between 1995 and 2002, U.S. trade remedy measures were challenged 30 times. India imposed almost as many measures, but never faced a single challenge. Argentina and the European Union, also significant users, were challenged in far fewer cases than the United States.

The report makes clear that the WTO is a plaintiff's court. Complaining parties almost always win. But the decisions against the United States have had significantly more far-reaching effects than those against other countries. In 30 cases brought against the United States, panels have called for the revision or removal of two U.S. laws, one regulation, three agency practices, and 21 trade measures. By contrast, in 34 cases brought against trade remedy measures imposed by countries other than the United States, no laws or regulations have been found inconsistent with WTO rules, and only one practice and 7 measures are subject to revision or removal.

Why is the United States losing so many cases, with such devastating effects? The agencies that enforce our trade laws – the Commerce Department and the International Trade Commission – told GAO they have no doubt that WTO panels and the Appellate Body are failing to apply the deferential standard of review for which the United States bargained in the Uruguay Round. The agencies, together with a number of respected trade laws experts consulted by GAO, pinpoint a number of instances where panels have created obligations that do not exist in the text of any WTO agreements. Even experts who did not see problems with the standard of review agreed that many WTO trade remedy decisions are unadministrable and could impede the United States' ability to

impose trade remedies in the future. In sum, the report makes clear that other countries are using an aggressive litigation strategy to change the outcome of the WTO Uruguay Round negotiations.

We can't stop other countries from targeting our trade laws. Our transparent laws and large market make the United States a target of choice. But we can and should be doing more to defend our trade laws, to reform the WTO dispute resolution process, and to use that process to our advantage.

In this case, the best defense is, at least in part, a good offense. The United States should use the WTO dispute resolution process to challenge other countries' application of trade laws where appropriate. We should not be afraid to strengthen our trade laws in ways that are WTO consistent. For example, earlier this year I proposed legislation to permit treating countervailing duties as a cost in antidumping cases.

At the same time, the Administration should be aggressively pursuing reforms to the Dispute Settlement Understanding that will reign in panels and prevent future harm. We should also use the WTO Rules negotiations in the Doha Development Round to repair the damage already done to our trade laws by revising the Antidumping, Subsidies, and Safeguards Agreements as appropriate.

Most importantly, this report confirms my belief that we need the independent WTO Review Commission I proposed in legislation introduced earlier this year. A Review Commission made up of retired judges could objectively examine the consistency of WTO panel rulings with the WTO's governing agreements. The idea was first put forward by Senator Bob Dole in 1995 and remains a sound one. If the Commission concludes that a panel ruling is consistent with the agreements, it will help lay to rest the growing criticism of these decisions. If it finds that panels are legislating, it will confirm the need for Congress and the Administration to take action. "

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